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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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**MAR 29 1996**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**In the Matter of**

**Telephone Number Portability**

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**CC Docket No. 95-116  
RM 8535**

**To: The Common Carrier Bureau**

**COMMENTS OF MOBILEMEDIA COMMUNICATIONS, INC.**

Pursuant to Sections 1.49, 1.415, and 1.419 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), MobileMedia Communications, Inc., the parent company of MobileMedia Paging, Inc. and Mobile Communications Corporation of America (collectively "MobileMedia"), hereby submits these comments in response to the Common Carrier Bureau's ("Bureau") request for further comments on telephone number portability, *Public Notice*, DA 96-358 (released Mar. 14, 1996), *summarized*, 61 Fed. Reg. 11,174 (Mar. 19, 1996) ("*Public Notice*"). In the *Public Notice*, the Bureau has asked for comments regarding the impact of the Telecommunications Act of 1996 ("1996 Act")<sup>1</sup> on the issues previously raised in this proceeding.<sup>2</sup>

**I. INTRODUCTION AND INTEREST OF MOBILEMEDIA**

1. MobileMedia is the second largest paging carrier in the nation, having operations throughout the fifty states and a sales presence in 97 of the top 100 markets. The company is a holder of common carrier paging licenses in the 35, 43, 152, 158, 454/459 and 931 MHz bands,

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>2</sup> See *Telephone Number Portability*, CC Docket No. 95-116, *Notice of Proposed Rulemaking*, FCC 95-284 (released July 13, 1995) ("*NPRM*").

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and private carrier paging licenses in the 152, 462 and 929 MHz bands. In the 929 MHz band alone, MobileMedia operates more than 1,000 transmitters. In addition, the company has two nationwide one-way wireless networks, and two nationwide narrowband PCS licenses. Overall, MobileMedia has seen its subscriber base increase from just over a half a million subscribers in 1989 to more than 4.2 million subscribers today, a trend reflective of the robust growth of the paging industry in general.

2. In the *NPRM* in this proceeding, the FCC sought comment on the technical feasibility, implementation costs, and overall benefits of number portability.<sup>3</sup> The Commission tentatively concluded that number portability would benefit consumers of telecommunications services by promoting competition among service providers, and that the FCC should assume a leadership role in developing a national number portability policy.<sup>4</sup> Overall, the commenters agreed that service provider portability would enhance competition and should be mandated for wireline services.<sup>5</sup> However, commenters familiar with the paging and messaging industry opposed number portability measures, particularly on an interim basis, on the grounds that such measures are technically and economically inconsistent with paging and messaging services and are not necessary in an already competitive industry.<sup>6</sup>

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<sup>3</sup> *NPRM* at ¶ 6. The Commission has defined three types of number portability. "Service provider portability" is the ability of end users to retain their same phone numbers when switching between service providers. "Service portability" is the ability of end users to keep their same phone number when switching between services. "Location portability" is the ability of end users to retain their same phone numbers when moving between geographic locations. *Id.* at ¶ 13.

<sup>4</sup> *Id.* at ¶ 7.

<sup>5</sup> See Personal Communications Industry Association ("PCIA") Reply Comments at 3.

<sup>6</sup> See Comments of AirTouch Paging and Arch Communications Group ("Joint Comments") at 12-16; Paging Network, Inc. ("PageNet") at 3-4, 8-15; PCIA at 3-5, 9-10.

3. Following the completion of the initial pleading cycle in this proceeding, the 1996 Act was signed into law. The 1996 Act added a new section to the Communications Act which requires local exchange carriers ("LECs") to provide number portability to the extent technically feasible.<sup>7</sup> The Bureau has asked for comments regarding the impact of this new requirement upon the issues previously raised in this proceeding.<sup>8</sup> Because the implementation of final number portability requirements have the potential to effect the technical configuration and costs of the service MobileMedia provides to the public, it is directly interested in the outcome of this proceeding.

## **II. DISCUSSION**

### **A. The 1996 Act Imposes the Duty to Provide Number Portability Solely On LECs, and Is Inapplicable to Competitive Markets, Such as Paging**

4. The 1996 Act adds new Section 251(b)(2) to the Communications Act, which imposes on LECs, "the duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."<sup>9</sup> On its face, this language is applicable solely to LECs. By implication, then, Congress did not extend the duty to provide number portability to other telecommunications carriers, including providers of paging and messaging services. If Congress had intended to require these non-LEC carriers to provide

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<sup>7</sup> See 47 U.S.C. § 251(b)(2).

<sup>8</sup> See *Telephone Number Portability*, CC Docket No. 95-116, *Notice of Proposed Rulemaking*, FCC 95-284 (released July 13, 1995) ("NPRM").

<sup>9</sup> 47 U.S.C. § 251(b)(2). The 1996 Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers . . . when switching from one telecommunications carrier to another." 47 U.S.C. § 153. Thus, the 1996 Act contemplates only service provider portability, and not service or location portability. See *supra* note 3. Because the record shows that service and location portability are not "as competitively significant" as service provider portability, see PCIA Reply Comments at 3, and because they are not required by the 1996 Act, MobileMedia limits its comments herein to service provider portability.

number portability, it would have included explicit language to this effect. It did not do so, however, because the non-wireline markets are not faced with the same competitive concerns as the local exchange marketplace.

5. The legislative history of Section 251(b)(2) supports this analysis. Specifically, it reveals that Congress considered the issue of number portability in the broader context of creating competitive markets and diffusing the market power possessed by LECs.<sup>10</sup> The original House proposal included number portability as one of the “specific requirements of openness and accessability *that apply to LECs as competitors enter the local market,*” and defined number portability as “the means by which customers may stop receiving service from their local telephone service provider and ‘take’ their telephone number with them to a new provider.”<sup>11</sup> Similarly, the original Senate proposal stated that a “local exchange carrier[] possessing market power” must, upon request, “take any action under its control to provide interim or final number portability as soon as it is technically feasible.”<sup>12</sup> The relevant market for purposes of assessing market power included “all providers of telephone exchange service or exchange access service.”<sup>13</sup> The final language included provisions from both the House and Senate bills.

6. It is clear from this history that in enacting the number portability requirement, Congress was concerned primarily with the development of competition in the local exchange marketplace — still governed primarily by a single monopoly service provider, the LEC — and not with mandating number portability for any other competitive markets. Recognizing this,

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<sup>10</sup> See H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 117-21 (1996).

<sup>11</sup> H.R. Rep. No. 204, 104th Cong., 1st Sess. 71-72 (1995) (emphasis added).

<sup>12</sup> S. Rep. No. 23, 104th Cong., 1st Sess. 19-20 (1995).

<sup>13</sup> *Id.* at 19.

Congress sought in the 1996 Act to take steps to open up the local exchange market to competition by requiring LECs to provide number portability.<sup>14</sup>

7. The competitive considerations that led Congress to impose a number portability requirement upon LECs are not present in the burgeoning commercial mobile radio service ("CMRS") marketplace.<sup>15</sup> In particular, the Commission has previously found that the paging industry is "highly competitive," and that on average a paging carrier competes with at least five other paging carriers in a given market, and up to nineteen in some markets.<sup>16</sup> Nationwide, there are over 500 paging service providers, and within the Washington, D.C. metropolitan area alone the District of Columbia Yellow Pages lists dozens of companies providing paging services.<sup>17</sup> Because of this level of competition, there was no need for Congress to impose a number portability requirement upon non-LECs.

**B. The FCC Should Limit the Scope of this Proceeding to Promulgating LEC Number Portability Requirements, and Defer Consideration of Portability Issues for Competitive Markets Like Paging Where the Need is Not Urgent**

8. For the same reasons Congress limited the duty to provide number portability solely to LECs, the Commission should redefine the scope of this proceeding to limit its rulemaking to promulgating the LEC number portability regulations required by the 1996 Act.

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<sup>14</sup> See 47 U.S.C. § 251(b)(2). Congress also directed LECs not to prohibit resale of their service, to provide dialing parity, to provide access to poles and other rights-of-way, and to establish reciprocal compensation arrangements. § 251(b). An incumbent LEC must also provide interconnection to its network. § 251(c)(2).

<sup>15</sup> See *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, First Report*, 10 F.C.C.R. 8844, 8845, 8866-68 (1995).

<sup>16</sup> *Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Second Report and Order*, 9 F.C.C.R. 1411, 1468 (1994) ("CMRS Second Report"), *recon. in part*, 10 F.C.C.R. 7824 (1995).

<sup>17</sup> See PCIA, *Paging Resale: Regulation in Search of a Problem*, at 2 (Jan. 1996).

In the *NPRM*, the FCC focused in particular upon one claimed benefit of number portability: it promotes competition among telecommunications service providers.<sup>18</sup> The Commission also expressed concern that “customers who otherwise were willing to consider changing their local telephone company would be unlikely to consider such a change if they also had to change their telephone numbers.”<sup>19</sup> However, the Commission recognized that there might be “situations, such as number churn, . . . [which would] enable competing providers of local telephone service to compete for customers without service provider number portability.”<sup>20</sup> Mobile Media submits that in the case of paging and messaging services, the marketplace is currently fully competitive without service provider number portability, and that, accordingly, there is no public interest objective warranting a number portability requirement for these services.

9. As previously noted, while the wireline local exchange marketplace is not currently competitive, the wireless industry, particularly paging, is competitive. Notably, the high churn rate for paging demonstrates that a lack of number portability has not been an obstacle to the development of a fully competitive industry.<sup>21</sup> For example, PageNet has noted that although paging subscribers may be reluctant to change telephone numbers, “they are, nevertheless, doing so, as evidenced by the significant amount of churn of paging customers and

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<sup>18</sup> *NPRM* at ¶¶ 4-7, 19.

<sup>19</sup> *Id.* at ¶ 22.

<sup>20</sup> *Id.* at ¶ 23.

<sup>21</sup> Paging surveys conducted by EMCI, Inc. as recently as January 1995 revealed that the paging industry churn rate is about 3% per month, or (cumulatively) 36% per year. For an industry with approximately 34 million pagers in service, this represents an annual churn of nearly 12.25 million paging subscribers. EMCI calculates that 15% of this churn is due to competition within the paging industry, and 3% is due to other competition. Thus, 18% of the churn of paging subscribers, approximately 2.2 million subscribers per year, occurs as the result of competition.

the significant amount of competition in that market.”<sup>22</sup> PCIA has also noted that unlike the local exchange market, paging subscribers have always had a wide variety of service provider options.<sup>23</sup> In fact, the Commission has reached the same conclusion: “The combination of high capacity, large numbers of service providers, ease of market entry, *and ease of changing service providers* results in paging being a very competitive segment of the mobile communications market.”<sup>24</sup> Thus, concerns over competition and customer flexibility do not exist in the paging context. These concerns being absent, MobileMedia submits that further consideration of this issue is unwarranted and counterproductive.

10. Continuing the instant rulemaking with respect to non-LEC number portability issues for markets where partial or full competition already exists, particularly the paging and messaging services market, will waste valuable Commission resources and delay implementation of the 1996 Act. Accordingly, the Commission should narrow the scope of this proceeding and devote its resources to the completion of the rules required for implementation of the 1996 Act. To the extent numbering portability concerns develop in the future outside the LEC realm, the Commission can initiate a new proceeding on these issues when needed.

**C. To the Extent the FCC Determines to Continue This Proceeding for All Services, MobileMedia Strongly Discourages Adoption of an Interim Plan**

11. If the Commission nevertheless determines to continue the instant proceeding for all services, MobileMedia strongly discourages the adoption of an “interim” number portability

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<sup>22</sup> PageNet Reply Comments at 6. AirTouch and Arch similarly noted that the “increased amount of ‘churn’ in telephone numbers to which those placing and receiving telephone calls have become accustomed has reduced the urgency to implement a universal portability plan.” Joint Comments at 5-6

<sup>23</sup> PCIA Reply Comments at 15.

<sup>24</sup> *CMRS Second Report*, 9 F.C.C.R. at 1468.

plan. In the *NPRM*, the Commission focused its analysis upon two measures capable of attaining number portability on an interim basis: network based remote call forwarding (“RCF”) and trunk based flexible direct inward dialing (“DID”).<sup>25</sup> As shown below, neither of these solutions is appropriate or necessary in the paging context, and from a technical feasibility standpoint the proposed interim measures cannot be implemented on a wide scale at this time.

**1. The Proposed Interim Measures Will Lead to Increased Number Exhaustion and Service Delays**

12. As noted by PCIA, AirTouch Paging and Arch, the interim solutions proposed by the Commission in the *NPRM* — RCF and flexible DID — amount to little more than advanced call forwarding.<sup>26</sup> RCF allows a customer to keep its old number by translating it into a new number that corresponds to the new provider’s switch. However, this solution requires *two* ten-digit telephone numbers, and thus contributes to the already critical problem of number exhaustion.<sup>27</sup> It also increases the time necessary to complete a call and may degrade transmission quality. Flexible DID routes calls dialed to the old number over a dedicated facility to the new provider’s switch. Although only one number is used, call completion and transmission degradation concerns remain applicable.<sup>28</sup>

13. Because paging is a very high volume/low margin business, the imposition of any measures which would increase number exhaustion and thus reduce the volume of traffic could have very detrimental business consequences. Perhaps more importantly, however, paging is a

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<sup>25</sup> *NPRM* at ¶¶ 57-60. The other interim measures put forth by the Commission are all effectively derivatives of RCF and flexible DID. *Id.* at ¶ 61.

<sup>26</sup> *See* Joint Comments at 12-15; PCIA Comments at 9-10.

<sup>27</sup> *See NPRM* at ¶ 58.

<sup>28</sup> *See id.* at ¶ 60.



service relied upon for its speed of delivery for critical emergency operations. For example, MobileMedia provides paging services to hospitals, police and fire departments, large oil and gas companies and nuclear power plants (needing to alert key personnel of disasters), electric and water utilities, and programs such as PCIA's "Life Page" program (notifying organ recipients promptly of the availability of a suitable donor). Any interim measures, such as RCF or flexible DID, which delay the delivery of a page in these emergency settings would clearly not be in the public interest.<sup>29</sup>

**2. The Proposed Interim Solutions are Not Technically Feasible for One-Way Services Such as Paging**

14. Besides the issues of number exhaustion and service delay, however, the proposed interim measures are currently not technically feasible in the overwhelming majority of paging terminals.<sup>30</sup> Unlike conventional switches which are used to transfer and receive two-way voice calls, paging trunk terminals are designed solely to terminate one-way traffic. They are thus optimized to perform a narrowly defined range of functions for the termination of calls originating on the public switched network. In order to implement the proposed call forwarding measures in a paging environment, existing paging terminals would have to be replaced, and their numbers increased,<sup>31</sup> with equipment capable of a wide variety of switching and routing functions.

15. MobileMedia has within the last twelve months updated or replaced nearly all of its existing paging terminal equipment with new state-of-the-art digital equipment, and has been

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<sup>29</sup> See also PageNet Comments at 10-12.

<sup>30</sup> See Joint Comments at 14; PCIA Comments at 5 & n.17, 9; see also PageNet Comments at 9.

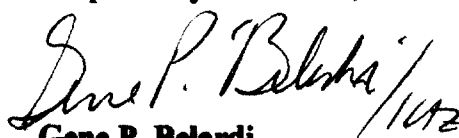
<sup>31</sup> As many as two times the number of trunks currently by paging carriers may be necessary to implement call forwarding in a paging environment.

an industry leader in this regard. Nevertheless, only approximately 2% of this new equipment is capable of provide call forwarding. Out of a total of 275 newly-replaced paging terminals currently used in the MobileMedia network, 270 of these terminals would have to be replaced *again* to accommodate call forwarding. This would be a prohibitively expensive undertaking that is completely unnecessary for the provision of paging service. MobileMedia estimates that in its case alone such replacement could exceed the 200 million dollar mark.<sup>32</sup>

### **III. CONCLUSION**

The Commission should refrain from adopting broad-based number portability requirements at this time, particularly in the paging context where they are neither appropriate nor technically feasible, and focus instead upon the promulgation of LEC number portability rules necessary to implement the 1996 Act. In competitive markets like paging, the FCC should continue to let market forces and customer demand drive the movement towards increased number portability, rather than mandating such a requirement where there is no demonstration of need. To the extent numbering portability concerns develop in the future outside the LEC realm, the Commission can initiate a new proceeding on these issues when needed.

**Respectfully submitted,**



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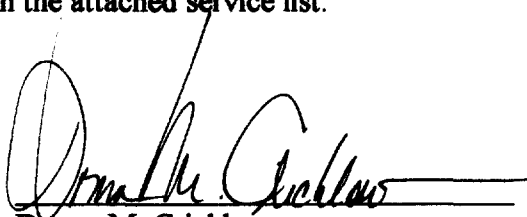
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<sup>32</sup> See also PCIA Comments at 5 n.17 (noting that "one nationwide paging company indicated a capital expenditure of approximately 30 million dollars [would be required] to accommodate number portability").

**CERTIFICATE OF SERVICE**

I, Donna M. Crichlow, hereby certify that copies of the foregoing Comments of MobileMedia Communications, Inc., in CC Docket 95-116, were sent via first class United States mail, postage prepaid, to the parties named on the attached service list.



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